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SUPERIOR COURT
YAVAPAI COUNTY, ARIZONA

2009 JUN 16 AM 10:41 ✓

JEANNE HICKS, CLERK

BY: S Smisko

IN THE SUPERIOR COURT OF STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,

Plaintiff,

v.

STEVEN CARROLL DEMOCKER,

Defendant.

CR 2008-1339

Division 6

STATE'S REPLY TO DEFENDANT'S
RESPONSE TO MOTION TO COMPEL
AMAZON.COM TO PRODUCE
DEFENDANT'S PURCHASE HISTORY
FOR *IN CAMERA* INSPECTION.

The State of Arizona, by and through Sheila Sullivan Polk, Yavapai County Attorney, and her deputy, Joseph C. Butner, submits its reply to Defendant's Response to the State's Motion to Compel Amazon.com to produce Defendant's purchase history for an *in camera* inspection.

It is a fact that at least four books instructing one how to run, hide, and disappear from public view indefinitely were purchased from Amazon.com using Defendant's Amazon account and charged Defendant's American Express credit card. The purchase was made from a computer at a property here in Prescott rented by Defendant on a short-term basis. The books were delivered to Defendant at the UBS office located at 1560 Plaza West Drive in Prescott and received by Defendant's co-worker. Defendant personally claimed the books. Copies of three of these books were found in Defendant's storage locker during the execution

1 of a search warrant. Another copy was discovered during the execution of a separate warrant
2 at an apartment Defendant shared with his daughter, Katie DeMocker.

3 During a preliminary search of Defendant's computer, Detective Steve Page found
4 evidence that the user had searched terms such as "how to kill someone," "tips from a hit
5 man on how to kill someone," "how to kill and make it look like suicide," and "how to kill
6 someone and make it look like an accident." There is evidence that Defendant was
7 attempting to obtain gases including the deadly gas carbon monoxide.
8

9 Law enforcement determined that the room where the victim, Carol Kennedy, was
10 found was staged to make it appear that Carol had sustained her fatal injuries when she fell
11 from a ladder. Although spatters of blood were found on nearly every surface close to body,
12 some were even found across the room several feet away, not one drop was found on the
13 ladder, which was just inches from Carol's battered and badly lacerated skull.
14

15 The State believes Defendant used multiple resources to research how best to kill
16 Carol, to either stage it as a suicide or an accident, and to disappear afterwards if necessary.
17 The documents requested, which cannot be obtained from any source other than
18 Amazon.com, are extremely relevant to the State's on-going investigation regarding
19 Defendant's motive, opportunity, intent, preparation, plan and knowledge. The records
20 sought are for a limited period of time. The subpoena *duces tecum*, which was served on
21 January 28, 2009, listed a range from January 1, 2006 to present. The State would amend
22 that range to end on the day of Defendant's arrest, October 23, 2008. The State also requests
23 that the records be inspected *in camera* as to avoid disclosure of any purchases not relevant
24 to this case.
25

26 In *United States v. Nixon*, 418 U.S. 683, 699-700, 94 S.Ct. 3090, 3103 (1974), the

1 United States Supreme Court set out the following standard for trial subpoenas.

2 [I]n order to require production prior to trial, the moving party
3 must show: (1) that the documents are evidentiary and relevant;
4 (2) that they are not otherwise procurable reasonably in
5 advance of trial by exercise of due diligence; (3) that the party
6 cannot properly prepare for trial without such production and
7 inspection in advance of trial and that the failure to obtain such
8 inspection may tend unreasonably to delay the trial; and (4)
9 that the application is made in good faith and is not intended as
10 a general "fishing expedition."

11 *Nixon* at 699-700, 94 S.Ct. 3090, 3103.

12 *Nixon* also states that "[a] subpoena for documents may be quashed if their
13 production would be 'unreasonable or oppressive,' **but not otherwise.**" *Id.* at 698, 94 S.Ct.
14 3090, 3103 (emphasis added).

15 The State has met the requirements of *Nixon* and Defendant's use of the 1st
16 Amendment to shield these records should not be allowed. In this case, the State's attempt to
17 determine whether Defendant purchased any how-to books, how to kill or how to kill and
18 make it look like a suicide or accident, the "expressive material" normally protected by the
19 1st Amendment, should be treated no differently than if the State were attempting to
20 determine whether Defendant purchased dangerous chemicals, gases or weapons.

21 For these reason, the State's request for an Order requiring Amazon.com to produce
22 Defendant's purchase records for *in camera* inspection should be granted.

23 ///

24 ///

25 ///

26 ///

Office of the Yavapai County Attorney

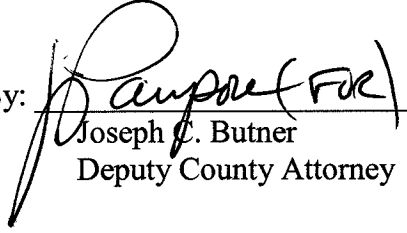
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RESPECTFULLY SUBMITTED this 16th June, 2009.

Sheila Sullivan Polk
YAVAPAI COUNTY ATTORNEY

By: 
Joseph C. Butner
Deputy County Attorney

COPIES of the foregoing delivered this
16th day of June, 2009 to:

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